

# **Libby Community Advisory Group**

## **Meeting Summary**

### **March 13, 2008**

#### **Introductions**

The members of the Libby Community Advisory Group (CAG) and its facilitator, Gerald Mueller, introduced themselves.

#### **Agenda**

The CAG agreed to the following agenda for this meeting:

- Voices of Libby Survey;
- Agency Reports;
- Preparation for Joan Miles' Visit;
- CAG Work Plan;
- Parker Presentation; and
- Public Comment.

#### **Voices of Libby Survey**

CARD's Tanis Hernandez explained a survey being conducted by Dr. Rebecca Cline, Senior Scientist, Communications and Behavioral Oncology, with the Karmanos Cancer Institute. During the spring of 2006, Dr. Cline conducted focus groups in Libby to assess values held by people in the Libby community. Dr. Cline reported to the CAG on the results of the focus groups in April 2007. Because the focus groups were self-selected, they did not necessarily represent all of the Libby community. To collect representative information, two weeks ago, Dr. Cline mailed surveys to a random sample of two populations, people with a postal address including the Libby zip code 59923 and CARD patients. The 59923 zip code includes about 4,300 addresses, and surveys were mailed to about one-third of them, or 1,013. To date, some 500 surveys have been returned from the 59923 mailing, a response rate of 49%. About 77% of 100 CARD patients returned the survey. Survey responses are kept anonymously. Dr. Cline plans to return to Libby and the CAG to explain the survey results at a future date.

*Audience Member Question - Did the focus groups choose the survey questions?*

Answer - No. Dr. Cline chose the survey questions based on common themes identified in the focus groups.

*Audience Member Question - Do we know when Dr. Cline will be here?*

Answer - No, her trip is not yet scheduled.

*Audience Member Question - Were all of the second population of 100 people CARD patients?*

Answer - Yes, they were all patients who signed consent forms to participate in future research.

#### **EPA Report**

Ted Linnert and Mike Cirian reported on behalf of EPA on the following topics.

W.R. Grace Settlement - The federal government has reached a settlement with W.R. Grace for \$250 million to reimburse the federal government for the costs of the investigation and cleanup of asbestos contamination in Libby. The settlement agreement has been lodged with the bankruptcy court. A copy of the March 11, 2008 press release is included below as Appendix 2.

The \$250 million includes \$11 million for operation and maintenance and \$239 million to pay for future investigation and cleanup costs. If approved by the bankruptcy court, these amounts will be deposited in separate interest bearing accounts. The \$11 million in operating and maintenance funds will not be used for nine years, and over this period is expected to grow to \$30 million. Costs of the mine cleanup are not included in the \$250 million and will be addressed separately. Claims by the State of Montana against W.R. Grace are also a separate matter and are not addressed in this settlement.

*Audience Member Question - Is \$250 million enough?*

Answer - The \$250 million is more than EPA expected to get. It will be used to pay for future work. Because these funds will be deposited in an interest bearing account, they are expected to grow. By the time EPA finishes the cleanup and leaves Libby, the account may be large enough to pay back some or all of the \$168 million spent to date.

*Audience Member Comment - The \$250 million is not enough money. When my home was cleaned, I had to replace the carpet and linoleum myself.*

Response - When it is completed, if the risk assessment says that carpets should be replaced, then EPA will pay to do so.

*CAG Member Comment - Next Tuesday evening at 7:00 p.m., the TAG will convene a public meeting focused on the settlement agreement. The meeting will be in room 117 of the college. Everyone is welcome to attend.*

*Audience Member Question - Will the \$54 million that EPA was awarded in 2003, but which W.R. Grace has not yet paid, be a part of the \$250 million?*

Answer - Yes.

*Audience Member Question - Will the \$168 million already spent come out of the \$250 million?*

Answer - The \$250 million is for future investigations and cleanup. If funds remain when the cleanups are completed, then some or all of the \$168 million will be repaid.

*Audience Member Comment - According to a story that ran in the March 12, 2008 Missoulian, Paul Peronard estimates that completing the cleanups will require \$175 million. Adding the \$175 million to the \$11 million for operation and maintenance and the \$168 million spent to date totals \$351 million, not \$250 million.*

Response - The \$250 million will include \$239 million for future investigations and cleanup and \$11 million for operation and maintenance. The \$250 million will be deposited in interest bearing bank accounts. I have been told that this amount will earn about \$3 million every 60 days. When the cleanup work is finished, if funds remain, then all or some of the \$168 million will be repaid.

*Audience Member Question - It is wonderful to get this settlement, but EPA is still spending \$17 million a year prior to completing the risk assessment. Why do we have to wait until 2011-2012 for completion of the risk assessment to know how clean is clean?*

Answer - We expect to finish within three years the studies on which the risk assessment will be based. We will then know whether leaving some vermiculite behind in walls will be acceptable.

*Audience Member Question - We have only 30 days to comment to the bankruptcy court on the amount of the settlement. EPA has kept this community in the dark. Can anyone tell me what figures went into the \$11 million for operation and maintenance?*

*Audience Member Comment - Back in October 2004, the TAG requested additional information about the cleanup in Operating Unit 4 (Libby residences and businesses). We did not get a response. This community is not capable of commenting based on what we now know. EPA has blown by us and has taken away our rights.*

Response - The \$11 million amount for operation and maintenance can be adjusted when the record of decision is signed.

*Audience Member Question - Does the settlement allow the \$250 million to be increased in the future?*

Answer - No, under the settlement W.R. Grace is obligated only to pay the \$250 million.

*Audience Member Question - Do you have sufficient information to respond to the bankruptcy court?*

*Audience Member Question - Is it possible that after the risk assessment is completed, EPA will have to revisit 400 homes?*

Answer - Yes. Paul Peronard has said that it may be necessary to revisit the exterior of some homes, including a few crawl spaces.

*Audience Member Comment - You spent \$168 million to get it wrong.*

*Audience Member Question - Did the local EPA team have input into the settlement?*

Answer - Department of Justice attorneys negotiated the settlement with input from Paul Peronard. The local team had input to Paul.

*CAG Member Comment - It would have been nice if EPA had let us know about the pending settlement so that this community could have prepared to comment on it. 30 days is not enough time to respond.*

Response by Catherine LeCours - It is correct that the state and EPA knew that settlement discussions were underway. However, had we reported this fact, we could have been sent to jail.

*Audience Member Comment - You cannot tell me that \$11 million will be enough to pay future operation and maintenance costs. Inflation will eat up any interest that is earned on this amount.*

Response - We expect that the interest will be higher than inflation because banks will bid to hold this large amount of money.

*CAG Member Comment - We are talking as if all of the \$250 million will be spent all at once. Because of weather and other factors, the construction period in Libby is fixed. EPA can spend only so much each year. Interest will be earned on the unexpended portion of the funds. This interest may allow us to get ahead of the curve. This settlement offers us a good deal.*

*CAG Member Comment - Some have appeared to comment tonight that EPA should put a moratorium on cleanup until after the risk assessment is finished and we know how much cleanup is needed. I don't believe that people in Libby want to halt progress on the cleanup until then.*

*Audience Member Question - Who gets any remainder of the \$250 million after EPA finishes the cleanup?*

Answer- First, any remainder will be used to pay back the \$168 million already spent. If funds remain after repaying the \$168 million, they will go to the Superfund Program.

*Audience Member Question - Instead of continuing now with portions of the cleanup that is controversial, why not move instead to cleaning up the mine?*

Answer - Work on the mine cleanup is underway. The mine cleanup is not included in the settlement. Beginning last year, we have started removing visible vermiculite in the residential and business cleanups to hedge our bets.

*Audience Member Comment - EPA is to be congratulated for this change in policy, i.e., chasing visible vermiculate now rather than waiting for the results of the risk assessment.*

*Audience Member Comment - I am not necessarily opposed to the settlement, but we need to know what it will mean for the property cleanups. I want to know the status of the cleanup of my property. It has been cleaned before, but vermiculite is still leaking from my walls.*

*Audience Member Comment - It is not correct that in the absence of the risk assessment, we have no science to tell us what we are dealing with. Scientific literature tells us now that amphibole asbestos is 500 times more potent than chrysotile in causing mesothelioma. Current law says that a 1 in 10,000 excess cancer death is a problem that must be addressed. We will not achieve this rate here even if the cleanup is as thorough as possible. We need to clean Libby as thoroughly as possible and be done with it.*

Cleanup Work - Cleanup work will resume on April 7, 2008.

Activity Based Sampling - Interior and exterior activity based sampling is continuing. In this sampling people wear personal monitoring while conducting normal activities. Outdoor activities sampled include children playing, lawn mowing and raking, etc. Indoor monitoring includes both passive (e.g., watching television) and active (e.g., vacuuming carpets). We are conducting activity based sampling during three different seasons. Sampling has occurred on 80 individuals indoors and 76 out of doors.

Construction Contract Awards - Contracts were recently awarded to three firms, ER, ASW and Hudspeth.

*Audience Member Question - Are these firms local?*

Answer - ER has a local group, but is headquartered in St. Louis, Missouri. ASW is out of Lincoln, Nebraska, and Hudspeth is from Englewood, Colorado.

*CAG Member Question - Last meeting we were told that Mr. Mueller would be receiving EPA Administrator Johnson's reply to the letter from the CAG asking that he talk with US Department of Health and Human Services Secretary Leavitt to seek an alternative to the declaration of a Public Health Emergency that would address Libby's health care needs. Did Mr. Mueller receive a letter?*

Answer by Mr. Mueller - No, I have not received a letter from Administrator Johnson.

Answer by Ted Linnert - I will try to find out the status of the Administrator's response to the CAG letter.

## **State Report**

Catherine LeCours reported on behalf of DEQ. The state expects to report at the April CAG meeting on the summary of Troy data sampling, including how many residences need cleanups.

## **TAG Report**

LeRoy Thom and Dr. Brad Black reported on behalf of TAG. As was stated earlier in the meeting, TAG will begin a series of special meetings focused on the proposed settlement, beginning next Tuesday, March 18 at 7:00 p.m. in room 117 of the college. The settlement provides a unique opportunity for the community to have input into the bankruptcy proceeding. While we cannot predict how much money will be needed, we can work together to produce a solid statement on behalf of the community to the bankruptcy court.

*CAG Member Comment - Copies of both the press release announcing the settlement and the settlement agreement, itself, is available at [EaglesVoice.com](http://EaglesVoice.com).*

*Audience Member Question - Has the settlement agreement been published in the Federal Register?*

Answer by Ted Linnert - I don't know, but the 30-day comment period will not start until it is published in the Federal Register.

*CAG Member Comment - We need to remember that the settlement is not a done deal until it is approved by the bankruptcy judge.*

*CAG Member Question - Assuming this approval is obtained, how soon might EPA have the money?*

Answer by Ted Linnert - If all goes well, we would have the money by this fall.

*Audience Member Question - Is it realistic for the community to come to a consensus within 30 days? Should we ask for an extension of the comment period?*

Answer - The longer we wait, the greater the chance we won't get input.

Answer by Ted Linnert - Responding within 30 days will be a challenge. You could ask for a 90 day comment period, but EPA's attorney has advised me that the bankruptcy judge is not likely to grant it.

*CAG Member Comment - Everyone has a right to comment on the settlement to the bankruptcy*

*judge.*

*CAG Member Comment - The settlement is between W.R. Grace and the US Department of Justice (DOJ). It must be approved by the bankruptcy judge. If the public has a problem with it, the judge can deny it. We need to take into account the ramification of our comment. If the judge denies the settlement, we could be looking at many more years for another one, or no settlement at all.*

Response by Ted Linnert - W.R. Grace's other creditors will also be commenting on the settlement. Because the federal government is at the head of the line of creditors, the other creditors will likely be seeking to reduce the settlement. If it is denied, several more years of negotiation may be needed. We do not know what the status of W.R. Grace's financial condition will be at the time another settlement is reached.

*Audience Member Question - Are you saying, "Take it or leave it"?*

Answer by Ted Linnert - No, just that there are risks associated with attempting to renegotiate it.

*Comment by Catherine LeCours - Governor Schweitzer is watching the comments of this committee on the settlement. DOJ will be forwarding all public comments to the governor.*

*CAG Member Question - Does the state have a claim against W.R. Grace in the bankruptcy?*

Answer by Catherine LeCours - Yes.

### **CARD Report**

Mike Giesey stated that the National Summit of Mining Communities will meet in Butte in September, and that the conveners of this are looking for participation from Libby. Dr. Black will make a presentation at this meeting about health effects of the Libby asbestos exposure. Mr. Giesey asked if members of the CAG would be willing to appear on a panel to discuss the situation here.

***CAG Action - The CAG agreed to commit to provide a panel discussion at this conference.***

### **Preparation for Joan Miles' Visit**

The Director of the Montana Department of Health and Human Services (DPHHS) has agreed to attend the April CAG meeting. Mr. Mueller asked what topics CAG members would like Director Miles to address at this meeting. CAG members suggested three topics/activities:

- The date on which funds appropriated by the 2007 special session of the Montana legislature can be spent to support asbestos-related health services in Libby. Commissioner Windom stated that the county has a contract with DPHHS stating that the funds would be available as of December 14, 2007; however, DPHHS is now saying that the funds cannot be expended until July 1, 2008.
- A declaration of a public health emergency or some other plan to provide long-term funding for asbestos-related health care in Libby.
- Meetings with ARDNet, CARD, and the local committee chaired by Commissioner Windom that is looking into establishing a trust to provide long-term health care funding.

### **CAG Work Plan**

Because of time constraints, this item was deferred to a future meeting.

## **Parker Presentation**

In response to recent comments about the cleanup of the Parker's property on Rainy Creek Road, Mel and Lerah Parker presented a half-hour film which they made showing the circumstances before, during and after the cleanup. After the film, Mr. Parker made the following points:

- EPA did not provide compensation for the Parker's lost business.
- EPA initially promised payment for full replacement for destroyed property, but subsequently only provided replacement at market value.
- The Parkers were told initially that the cleanup and restoration of their property would take six months, but it has taken over eight years.
- EPA did not dig a basement for a house to replace the house that was torn down.
- EPA did provide a stipend for the Parkers to live on.
- It is important for EPA to bring in experts for the cleanup work such as the restoration of Rainy Creek.
- Paul Lammers has been very helpful in working with the Parkers on the restoration work.

## **Public Comment**

There was no additional public comment.

## **Next Meeting**

The next regular CAG meeting is scheduled for 7:00 to 9:00 p.m. on April 10, 2008 in the Ponderosa Room of Libby City Hall.



**Appendix 1**  
**CAG Member & Guest Attendance List**  
**March 13, 2008**

<b>Members</b>	<b>Group/Organization Represented</b>
David F. Latham	<i>The Montanian</i>
Philip Erquiaga	EaglesVoice.com
DC Orr	Libby Community
Trent Oelberg	Libby Main Street
Rita Windom	Lincoln County Commissioin
Ken Hays	Senior Citizens
Ted Linnert	Environmental Protection Agency (EPA)
Mike Cirian	EPA
Catherine LeCours	Montana Department of Environmental Quality
Dr. Brad Black	Lincoln County Health Officer
LeRoy Thom	Technical Advisory Group (TAG)
Mike Giesey	CARD

**Guests**  
Mel and Lerah Parker



Appendix 2  
**Department of Justice**

ENVIRONMENTAL PROTECTION AGENCY

FOR IMMEDIATE RELEASE  
TUESDAY, MARCH 11, 2008  
[WWW.USDOJ.GOV](http://WWW.USDOJ.GOV)

DOJ (202) 514-2007  
EPA (303) 312-6603  
TDD (202) 514-1888

W.R. GRACE TO PAY FOR CLEANUP OF  
ASBESTOS CONTAMINATION IN LIBBY, MONTANA

WASHINGTON - W.R. Grace, a global supplier of specialty chemicals, has agreed to pay \$250 million, the highest sum in the history of the Superfund program, to reimburse the federal government for the costs of the investigation and cleanup of asbestos contamination in Libby, Mont., the Justice Department and Environmental Protection Agency (EPA) announced today.

The action settles a bankruptcy claim brought by the federal government to recover money for past and future costs of cleanup of contaminated schools, homes and businesses in Libby.

The EPA has been removing asbestos-contaminated soils and other materials in and near Libby since May 2000. The federal government filed suit against W.R. Grace in March 2001 to recover its investigation and cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund law. The lawsuit also named Kootenai Development Corporation -- a W.R. Grace subsidiary -- as a defendant due to its ownership of three contaminated properties in Libby.

In 2003, the federal district court in Montana awarded EPA over \$54 million for cleanup costs incurred by EPA through Dec. 31, 2001. That award has not been paid due to W.R. Graces bankruptcy. Todays settlement resolves the 2003 judgment as well as continuing cleanup costs EPA has incurred since Dec. 31, 2001 and will incur in the future. EPA will place the settlement proceeds into a special account within the Superfund that will be used to finance future cleanup work at the site.

W.R. Grace owned and operated a vermiculite mine and vermiculite processing facilities in and near Libby from 1963 to 1990. The vermiculite ore was contaminated with asbestos. Vermiculite and asbestos have been found in various locations in and around Libby.

Asbestos, a recognized human carcinogen, is known to cause lung cancer and mesothelioma, a lethal tumor of the lining of the chest and abdominal cavities. Exposure to asbestos can also cause asbestosis, a disease characterized by scarring of the lung.

W.R. Grace and 61 affiliated companies filed for bankruptcy in April 2001. In March 2003, EPA filed a bankruptcy claim against the company to recover past and future cleanup

costs. W.R. Grace has corporate headquarters in Columbia, Md., and employees in nearly 40 countries. The company manufactures construction chemicals, building materials and chemical additives, among other things.

The settlement requires W.R. Grace to pay the \$250 million within 30 days of bankruptcy court approval. The settlement agreement will be lodged in the U.S. Bankruptcy Court for the District of Delaware and is subject to court approval after a 30-day public comment period. A copy of the settlement agreement is available on the Justice Department Web site at [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html).